

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

RONALD NAPOLEAN WOLFE, SR.,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

September 17, 1999

No. 213312

Livingston Circuit Court

LC No. 97-9961 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIE ELIZABETH WOLFE,

Defendant-Appellee.

No. 213313

Livingston Circuit Court

LC No. 97-9962 FH

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendants were charged with the unlawful manufacture of marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). They moved to suppress the evidence of the marijuana and, following a hearing, the trial court ordered the marijuana suppressed¹. Plaintiff appeals as of right, and we affirm.

While this Court reviews de novo a trial court's ultimate decision with regard to a motion to suppress evidence, it may set aside a trial court's findings of fact only upon a showing of clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998); MCR 2.613(C). In this case, we find no clear error in the trial court's findings, and therefore cannot justify a reversal.

After the evidentiary hearing, which took place over a period of eight days, the trial judge issued a comprehensive and cogent, thirty-nine page written opinion. We adopt and incorporate this opinion as our own. In the opinion, the trial court found, inter alia, that the bulk of the testimony concerning the information in the affidavit for the search warrant was totally unbelievable, and in some cases, blatantly false². The trial court's findings in this regard are supported by the record.

The trial court redacted the affidavit in support of the search warrant to eliminate the false statements and statements made with disregard for the truth. See *People v Melotik*, 221 Mich App 190, 200-201; 561 NW2d 453 (1997). It then considered the affidavit and found that no factual allegations remained which would allow a conclusion that any admissible or relevant records or evidence of crimes could be found in defendants' residence. Our review of the record and affidavit leads to the same conclusion that there was no fair probability that contraband or evidence of any particular crime would be found in defendant's residence. Therefore, suppression was warranted.

In making our ruling, we acknowledge that there were sufficient facts to establish probable cause to search a new pole barn and a gray airplane hanger which were on defendants' property. However, there was no probable cause to search the residence. For this reason, the prosecutor cannot meritoriously argue that the marijuana could be properly seized because the police were lawfully in a position from which they could view it. See *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996).

Defendant Ronald N. Wolfe raises four arguments in his cross-appeal. In light of our resolution of plaintiff's appeal, we need not address any of defendant's three arguments with regard to the legality of the search of his residence. Defendant's remaining argument, concerning evidence seized in a January 16, 1997 search, is not properly before us because the subject of the pending appeal is the trial court's order suppressing evidence seized in the December 23, 1996 search.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

¹ Although the trial court only suppressed the marijuana, the prosecution concluded that it could not proceed on the charge, and the entire case against defendants was dismissed.

² The marijuana at issue was found in a locked gun vault, which was behind some false shelving in defendants' residence. The prosecution witnesses agreed that no odor of marijuana could be detected when the vault was closed. Neither the affidavit nor the search warrant mention the manufacture or possession of marijuana.